XI-HC—78

(12)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 812/2004 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT (in custody)	Pokhram, son of Shri Dirip Ram Chauhan, aged about 32 years, resident of village Dhaurabhatha, P.S. Dabhra, Distt. Janjgir-Champa (CG).
		-Versus-
	RESPONDENT	State of Chhattisgarh, Through the District Magistrate, Janjgir-Champa (CG).

(Criminal Appeal under Section 374(2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

23-8-2007

Shri Gurudev I. Sharan, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State.

Heard on I.A.No.1 for suspension of sentence and grant of bail to the accused/appellant during pendency of this appeal.

At the very outset, learned counsel for the appellant argued that the accused has been convicted on the plea of guilty under Section 302 of the Indian Penal Code for commission of murder of his mother Smt. Sumati Bai. He further argued that it has come on record of the prosecution papers that accused was suffering from mental stress since last few days. Without understanding consequences of the case and ingredients of offence, the accused simply admitted the offence; therefore, the judgment itself is not sustainable.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Having heard learned counsel for the parties, we have perused the record.

Case of the prosecution, in brief, is that on 27-4-2004 at about 8.00 a.m. to 9.00 a.m. in the morning at Dabhra, accused attacked his mother Smt. Sumati Bai with a pick-axe and committed her murder. One day before the incident the father of the accused namely, Dirip Ram Chauhan, saw that the accused was saying that he will murder every one and was crying. On the next day, he attacked his mother.

Perusal of the charge sheet shows that when the charge was read over to the accused, he stated that he had attacked his mother with a pick-axe at about 8.00 a.m. in the morning and ran away to Dabhra. There is nothing on record that the accused pleaded guilty after understanding the consequences. First and foremost requirement for conviction under Section 302 of the IPC is that the accused had committed the murder with intention. In such a serious offence without any evidence on record regarding the intention of the accused to commit the murder of his mother, learned trial Court ought not to have convicted him in such a serious offence. Moreover, in Section 299 of the Cr.P.C. words '*may*' and '*discretion*' have been used and discretion is given to the Judge. He has to take a decision after considering all the pros and cons and facts and circumstances of each case. In the present case, it has come on record that since last few days the accused was saying that he will commit the murder of every one and that was heard by family members and without any rhyme and reason on the fateful he attacked his mother with a pick-axe. Therefore, in order to satisfy whether based on the prosecution papers, without further evidence, it was possible for the Court to reach to the conclusion that the accused had pleaded guilty after understanding the ingredients of the

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

offence, there is nothing on record about the mental condition of the accused and his capacity of understanding. Moreover, in this case it has come on record that the accused was mentally disturbed since last few days. Therefore, the Court was required to decide as to whether on the prosecution papers the ingredients of the offence are satisfied and based on the prosecution papers which offence was made out.

The aforesaid points have not been considered and without considering the said points the trial Court has accepted the plea and convicted the accused. Therefore, we are of the considered opinion that the judgment of trial Court cannot be sustained.

In the result, the appeal is accepted. The conviction and sentence imposed upon the accused/appellant are set aside. The case is remitted back to the trial Court to decide the same in accordance with law after recording the evidence of the prosecution. The trial Court before accepting the plea ought to have considered the judgment of this Court rendered in the matter of **Khilawan Singh vs. State of Chhattisgarh**[1] and also the judgment of Gauhati High Court rendered in the matter of **State of Mizoram vs. Shri Ramengmawia**[2]. The accused/appellant will be at liberty to move bail application before the trial Court.

Consequently, I.A.No.1 for suspension of sentence and grant of bail to the accused/appellant during pendency of this appeal stands disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

[1] 2003 (3) MPHT 1 (CG)
[2] 2006 (1) Crimes 744